IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.418 OF 2003

IN

SUMMARY SUIT NO.765 OF 2003

Jayshree R.Manial & ors .. Plaintiffs

versus

Deviduta Arunkumar & ors .. Defendants

...

Mr.H.V.Chande for Plaintiffs.

CORAM : D.G. KARNIK, J

DATED : 1st February, 2005.

P.C:-

1. Heard learned counsel for the plaintiffs. None present for the defendants when called. The plaintiffs have filed this suit for recovery of the money advanced to the defendant no.1 firm. The plaintiff has annexed to the plaint copies of the bills of exchange executed by the defendant no.2 as partner of the defendant no.1. He has also produced xerox copies of the cheques issued by the defendants all of which were dishonoured. Despite notice of

demand the defendants has failed and neglected to make the payment. Hence, the plaintiffs have filed this suit for recovery of the money. In the affidavit in reply filed by the defendant no.2 on behalf of the defendant no.1 he has admitted having received the loan and also of having executed the bill of exchange. He has also admitted issuance of the cheque. However, he has contended that the loan was taken through a broker and has been repaid to the broker. The broker is not the agent of the plaintiff for receiving the repayment. Assuming otherwise there is no evidence produced by the defendants for repayment to the broker.

2. In the circumstances, the defendants can be granted only conditional leave to defend the suit. Hence, I pass the following order :

> " The defendants are granted conditional leave to defend the suit subject to their depositing in court a sum of Rs.1,33,000/- within four weeks. If the money is deposited the plaintiff shall be entitled to withdraw the money by furnishing an undertaking to the court to repay the money with interest in the

event so ordered by the court or in the event the suit is dismissed. On such deposit the suit shall stand transferred to the list of commercial causes. The defendants shall file written statement within five weeks. On failure of the defendants to deposit liberty to the plaintiffs to apply."

D.G.KARNIK, J